In the Supreme Court of the United States

OCTOBER TERM, 1974

NO. 74-484

EDWARD J. PRINCE, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

Petitioner contends that certain statements of co-conspirators were not made in furtherance of the conspiracy and that he was denied his right to confront these witnesses.

Following a jury trial in the United States District Court for the Northern District of Texas, petitioner was convicted of one count of violating the anti-fraud provisions of the Securities Act of 1933, 15 U.S.C. 77q(a), two counts of mail fraud in violation of 18 U.S.C. 1341, and one count of conspiracy (to violate 15 U.S.C. 77e(a)(1), (2), and 77q(a) and 18 U.S.C. 2 and 1341) in violation of 18 U.S.C. 371. He was fined $15,000 and sentenced to a term of three years' imprisonment, to be followed by five years of probation. The court of appeals affirmed (496 F. 2d 1289; Pet. App. B).

The court described in detail the elaborate scheme to defraud the public in the offer and sale of United Australian Oil, Inc. (UAO) stock. Briefly summarized, the scheme commenced in August 1967, when Hardy Todd and Charles Farr acquired a controlling block of 820,000 shares of unregistered UAO stock from Nortex Oil and Gas Corporation (Nortex) for $80,000 (A. 550-561).[1] Although UAO had many public shareholders, it was a shell corporation with few assets (A. 561). In fact, Nortex listed the UAO stock on its financial books as worthless (A. 561).

Soon after acquiring control, Todd and his associates placed nearly worthless assets into UAO in return for large additional blocks of stock (A. 274-275, 291, 398, 407, 417-419, 432-433, 535-536, 637-638, 642, 707). A materially misleading letter describing these acquisitions by UAO and projecting a bright future for the company was sent to shareholders (A. 431-434). Petitioner prepared a report announcing UAO's purchase of a gold mine reportedly worth in excess of 40 million dollars (A. 1113-1116, 1121-1122). In order to substantiate this valuation, petitioner quoted from a long-deceased engineer's report, which actually related to another mining claim (A. 292, 327-329). The mine was worthless (A. 655). In fact, UAO never intended to purchase the mine; it permitted its option to expire before petitioner began preparation of his report (A. 707-708). After a few minor changes, however, petitioner's report was mailed to brokers throughout the country (A. 291-292, 326-329, 621).

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[1] "A." refers to the Appendix filed in the court of appeals.

During the course of these deceptions, over 17 million shares of UAO were sold to the public for more than four and one-half million dollars (A. 856-858, 933-937, 942, 976).[2] Petitioner sold approximately 4,505,000 of these shares and received a commission on each sale of 15-25%, totaling more than $250,000 (A. 957-959, 1099-1100, 1118).[3] The bulk of the proceeds, less petitioner's commission, were transmitted to Wallace Hammer, an associate of Todd, in cash or by cashier's checks made payable to fictitious persons (A. 310, 674, 679, 865-872, 888-894, 911-917, 1080-1081, 1085-1090). Petitioner used the remainder of the proceeds, less his commission, to purchase ten Cadillacs and two Buick Rivieras for UAO insiders (A. 258, 308, 742-743, 1076-1077).

The hearsay statements that petitioner challenges all relate to the cash generated by the fraudulent scheme and the procedure followed by the UAO transfer agent in handling inquiries concerning restrictions on the sale of the stock. Contrary to petitioner's contention, however, these statements were made during and in furtherance of the ongoing conspiracy of which petitioner was found

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[2]A confirmation for the purchase of 1,000 shares of UAO stock mailed by Sanders and Company to William C. Motes and Billie F. Motes and a check mailed by Ervin Radke to Sanders and Company provided the basis for the mail fraud counts (A. 330-331, 922-923).

[3]Petitioner claimed that he received proceeds from the stock in return for valuable timber rights that he sold to UAO (A. 1074-1075). However, no written agreement of this sale existed. Moreover, petitioner later sold his land and its timber to individuals outside UAO and retained the entire proceeds (A. 1098, 1117-1118).

to be a part.[4] See *United States* v. *Littman*, 421 F. 2d 981, 982-983 (C.A. 2), certiorari denied, 400 U.S. 991; *United States* v. *Baker*, 419 F. 2d 83, 89 (C.A. 2), certiorari denied *sub nom. DiNorscio* v. *United States*, 397 U.S. 971; *United States* v. *Hickey*, 360 F. 2d 127, 140-141 (C.A. 7), certiorari denied, 385 U.S. 928. In admitting them into evidence, the court applied the well-established rule that a co-conspirator's hearsay declaration is admissible against other conspirators if made in furtherance of the conspiracy. *Dutton* v. *Evans*, 400 U.S. 74, 81.

Petitioner's further contention that such admissions violated his Sixth Amendment right to confrontation has been expressly rejected by this Court. See *Dutton* v. *Evans, supra*, 400 U.S. at 80-82; *United States* v. *Nixon*, No. 73-1766, decided July 24, 1974. Moreover, Neva Jackson, the UAO transfer agent and declarant of two challenged statements, had been granted immunity prior to trial pursuant to 18 U.S.C. 6002 and therefore could have been called as a witness by petitioner (A. 124-130).

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ROBERT H. BORK,
Solicitor General.

DECEMBER 1974.

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[4]Petitioner contends that the court extended the traditional rule of admissibility to include hearsay statements made in furtherance of *any* conspiracy rather than restricting admissibility only to those statements made in furtherance of the conspiracy charged in the indictment (Pet. 4-7). He bases this assertion upon a statement attributed to Neva Jackson, which, he contends, referred to a conspiracy in the sale of Pacific Fidelity Corporation stock rather than UAO stock. The court, however, ruled that statement inadmissible when its relationship to Pacific Fidelity was brought out (A. 766-768). The court ruled Jackson's conversation admissible when it was presented to show the method she followed in UAO stock transactions (A. 300, 1007).